

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14056 of Arthur E. Murphy, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use the subject premises as a grocery store in an R-5-A District at premises 2488 Alabama Avenue, S.E., (Square 5844, Lot 812).

HEARING DATE: October 26, 1983

DECISION DATE: October 26, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject premises is located on the southwest corner of the intersection of Alabama Avenue and Knox Place, S.E. The site is in an R-5-A District and is known as premises 2488 Alabama Avenue, S.E.

2. The subject site is triangular in shape. Its dimensions are 212.56 feet on the east side, 158.13 feet on the northwest side, and 135.88 feet on the southwest side. It has an area of approximately 10,743 square feet.

3. The site is improved with a single family detached dwelling. The dwelling is a one story brick structure with attic and basement. It is currently vacant. Prior to becoming vacant, the structure was used as a residence. The structure is now in a deteriorated condition.

4. There is access to and from the subject structure from Alabama Avenue on the east and from Knox Place on the northwest. There is no alley access. Alabama Avenue is an arterial street which traverses a major part of southeast Washington, D.C. Knox Place is a small local traffic street which is one block long.

5. The subject square and the surrounding neighborhood are developed primarily with medium-density residential uses. In the subject square, there are apartment houses, churches, and private residences. At the rear of the subject site is the Garfield Hill apartment complex, which has been recently rehabilitated and is partially occupied. The Garfield Hill complex occupies the entire central portion of the subject square. Across Alabama Avenue to the east of the subject premises, is the site of the proposed Knox Hill development. This site is owned by the D.C. Government which has demolished the structures that

formerly occupied the Knox Hill site. A townhouse development of 360 units is planned for the site.

6. The subject neighborhood is zoned R-5-A on all sides of the subject square.

7. The subject area is undergoing major rehabilitation of residential properties sponsored by the District and Federal governments. Numerous single family dwellings, detached dwellings, rowhouses and apartment houses have either been renovated and reoccupied or are scheduled for such treatment.

8. The applicant has owned the subject property for approximately eight years. He purchased the property from elderly owners who had retired to a senior citizens facility. The dwelling was boarded up when the applicant purchased it. The only use made of the premises since the previous owners departed has been for the sale of Christmas trees and produce. The dwelling has been vacant for twelve years and will require extensive repairs.

9. The applicant intended to rehabilitate the premises or construct a small apartment building, but was advised by real estate agents that the neighborhood was not a viable location for an apartment building. The applicant has been unable to obtain financing to develop the property for residential use and does not have sufficient capital to develop it without assistance.

10. The applicant first advertised the subject property for rent or lease. No residential tenants have expressed an interest in the property. The only prospective tenants who have approached the applicant have intended to use the property for commercial uses such as fast foods.

11. The applicant then attempted to rehabilitate the structure as a single family dwelling. The abandoned site had become a location where neighbors dumped their trash. The applicant estimated that he removed 230 bags of trash from the site. The D.C. government has sent the applicant several letters requesting that the property be cleaned. The constant clean-ups have become a hardship on the applicant. The applicant argued that there is no further use that the applicant can put the property to and it has become an eyesore. It is also a safety hazard since vandals have begun breaking into the building.

12. The applicant subsequently advertised the subject property for sale. The only respondents were commercial users who wanted to put the property to a use such as a car wash, a gasoline service station or a fast food restaurant. The applicant hired a real estate agent. The agent received

the same result. The real estate agent advised the applicant that if an apartment building were constructed on the site, he was concerned that there would not be adequate room for parking due to the triangular shape of the lot. The agent perceived the subject property as a poor investment due to the conditions of the neighborhood and of the property.

13. The applicant testified that he has been unable to improve, rent or sell the subject property. The D.C. government has assessed the property at \$43,705 but no buyers have offered to pay that price. Meanwhile, the applicant must pay property taxes at the assessed value. The dilapidated building is not fit for occupation. The applicant is of the opinion that the premises will continue to be used as a neighborhood trash dump and as a target for vandals to burglarize.

14. In 1980, the applicant rented the subject property to Mr. Assani S. Sanoussi for use as storage space. The deal was concluded with a "handshake" and the rent was just enough to cover property taxes. The tenant, on his own initiative, filed an application for a use variance to permit a grocery store. The case, BZA Application No. 13292, was denied by Order dated October 31, 1980. The owner asserted that he had no knowledge of such case.

15. The prospective leasee, Mr. Ham has prior experience in renovating dilapidated properties and converting them into successful businesses. If the subject zoning relief is obtained, Mr. Ham would renovate the building, clean up the property and use the premises as a convenience store and carry-out. It would not be a fast food operation. The store would operate from 8:00 A.M. to 10:00 P.M. with three employees. The use is expected to generate neighborhood employment, tax revenue and to remove a safety hazard from the area. Mr. Ham expects his customers to be drawn from the surrounding residential uses. He will offer price-based competition for the local 7-11 grocery store.

16. The applicant argued that the neighborhood deterioration, the location of a bus stop in front of the dwelling, the existence of boarded up apartment buildings at the rear of the dwelling, the existence of vacant land across the street from the subject site and the heavy vehicular traffic on Alabama Avenue all rendered the site undesirable for residential use.

17. The applicant further argued that the size and triangular shape of the lot precluded its use for the construction of an apartment building. He argued that no parking could be located on the site if an apartment building were built.

18. The applicant had considered uses other than residential that were permitted. He argued that the other permitted uses were also precluded by the neighborhood conditions which make the location undesirable to prospective tenants or purchasers. The applicant rejected other potential uses for the subject property, based on anticipated marketing difficulties and the need for expensive renovations or construction of a new structure.

19. The Office of Planning by report dated October 20, 1983, recommended denial of this application. The Office of Planning reported that the applicant has not provided sufficient evidence of having exhausted the uses allowed in the R-5-A District for the subject site. In addition, the condition of the existing structure and the size and shape of the lot do not appear to be sufficiently unique or exceptional to preclude development with one of the allowed uses. The Board concurs with the reasoning and the recommendations of the Office of Planning.

20. Advisory Neighborhood Commission 8B, by letter dated September 30, 1983, recommended that the application be denied. The ANC, at its executive meeting of September 21, and again at its regular meeting of September 28, voted to oppose this request. The Commission reported that the area is already saturated with the type of operation proposed in the application. As there is little residential area remaining in the 8B area, not only would this contemplated use not serve the community, but the ANC felt that the use will negatively impact on the community.

21. Two Commissioners from ANC 8B also testified in opposition to the application at the public hearing. The Commissioners expressed concern that the proposed grocery and convenience store would be an encroachment on the limited residential land remaining in their community. The ANC reported that the neighborhood is undergoing a revitalization including the renovation and reoccupation of the apartment complex located behind the subject site, the Knox Hill development scheduled by the D.C. government for the vacant site across the street, and the Alabama Avenue renaissance sponsored by the D.C. government. The ANC argued that the proposed use variance would negatively impact the neighborhood revitalization program. Commercial uses within a half-mile radius of the subject site include four grocery and convenience stores, two supermarkets, a drug store that sells groceries and five carry-out food stores. The neighbors have no need for any more commercial facilities. The ANC further argued that Alabama Avenue is not becoming commercial but is an important residential street in the neighborhood. The ANC contended that an apartment building could be constructed on the site. The ANC argued that the property is neglected by the owner thus creating a neighborhood eyesore. The ANC had approached the

applicant with a request to rent the property as their offices. At that time the applicant informed them that he could not afford to rehabilitate the property and would have to seek a tenant who could finance the rehabilitation. The property continues to be a blight on the neighborhood. The Board concurs with the reasoning and the recommendations of ANC 8B.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purposes for which it is zoned. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

The Board concludes that the applicant has not met this burden of proof in showing an undue hardship inherent in the property. There is nothing in the size or shape of the land that would preclude it from being used for an R-5-A purpose. To the contrary, the subject property has a history of residential use for many years. The triangular shape, although an exceptional condition, does not create a hardship because it is still possible to construct a residential or other conforming structure on the lot due to its size. Further, economic problems in rehabilitating the property, marketing problems in renting or selling the property for a permitted use, and neighborhood problems during a period of transition are not hardships in the sense defined by the Zoning Regulations. Such hardships do not support the granting of a use variance.

The Board further concludes that the applicant has not exhausted all the uses permitted for R-5-A property either as a matter-of-right or by special exceptions. In addition to the possible residential uses, whether single family or multi-family, there are non-residential uses permitted which the applicant has not investigated. Either renovation of the existing structure or new construction would be possible to provide for a permitted use.

The Board further concludes that granting this use variance to operate a grocery and convenience store in an R-5-A District cannot be done without substantial detriment to the public good and substantial impairment to the intent and purpose of the zone plan. The granting of this use variance would be an encroachment on residential land in an

area undergoing revitalization and would have a negative impact on the revitalization effort.

The Board concludes that it has accorded "great weight" to the issues and concerns of the ANC 8B. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Carrie Thornhill, Walter B. Lewis, William F. McIntosh and Douglas J. Patton to deny; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

MAR - 5 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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